

**§ 54.508 Technology Plans.**

(a) When plan is necessary and content. Applicants seeking only basic telecommunications services do not need to develop a technology plan when requesting schools and libraries universal service support. Applicants must develop a technology plan when requesting schools and libraries universal service support (1) for eligible priority one services if they are not subject to state or local technology planning requirements and (2) for eligible priority two services. Applicants must document the date on which the technology plan was created. The technology plan must comply with state and local technology planning requirements or meet the standards established by the U.S. Department of Education's Enhancing Education through Technology, 20 U.S.C. § 6764, or the U.S. Institute for Museum and Library Services. The technology plan must include the following elements:

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

(b) Approval. Applicants required to prepare technology plans under this subpart must have such plan(s) approved. An applicant that has developed a technology plan approved by the state, the U.S. Department of Education's Enhancing Education through Technology, or the U.S. Institute for Museum and Library Services has an approved plan for purposes of the universal service program. Other applicants must obtain approval from either the Administrator or an independent entity approved by the Commission or certified by the Administrator as qualified to provide such approval. All parties who will provide such approval must apply the standards set forth in paragraph (a) of this section.

(c) Timing of certification. Applicants must certify on the FCC Form 471 that they have prepared a technology plan, if required. Applicants must also confirm in FCC Form 486 that their technology plan was approved before they began receiving services pursuant to it.

(d) [Delete]

11. Add § 54.510 to read as follows:

**§ 54.510 Competitive Bidding Requirements.**

(a) All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

(b) Competitive bid requirements. An applicant shall:

(1) seek competitive bids for all eligible priority one services in accordance with state or local procurement requirements. If requested by the Administrator, each applicant bears the burden of demonstrating compliance with state or local procurement requirements. Unless there is an existing contract signed on or before July 10, 1997, pursuant to § 54.511(c), an applicant that is not subject to state or local procurement requirements shall follow the FCC Form 470 posting requirements as set forth in subsection (c) of this subpart to meet the competitive bidding requirements.

(2) seek competitive bids for all eligible priority two services pursuant to the requirements established in this subpart, except as provided in § 54.511(c). These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state and local requirements.

(c) Posting of FCC Form 470.

(1) An applicant seeking to receive discounts for eligible internal connections products and services under this subpart shall post an FCC Form 470 to initiate the competitive bidding process. An eligible applicant that is not subject to state or local procurement requirements and that is seeking to receive for eligible

priority one service shall post an FCC Form 470 to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 should include:

- (i) a list of specified services for which the applicant anticipates they are likely to seek discounts; and
- (ii) sufficient information to enable bidders to reasonably determine the needs of the applicant.

(iii)-(vi) [Delete]

(2) The FCC Form 470 shall be signed by the person authorized to order eligible services for the eligible applicant and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding \$50 million;

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) All of the individual schools, libraries, and library consortia receiving eligible services are covered by:

- (A) Individual technology plans for using the internal connections products or services requested in the application that meets the requirements of § 54.508 of this subpart; or
- (B) No technology plan is required by the Commission's rules.
- (iv) The technology plan(s) has/have been/will be approved consistent with § 54.508 of this subpart or no technology plan is required.
- (v) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value except as allowed by § 54.513.
- (vi) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.
- (vii) All bids submitted for eligible priority one and priority two products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective offering consistent with § 54.511.
- (3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose.
- (4) After posting on the Administrator's website an applicant's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

12. Amend § 54.511 by revising subsections (a); (b), (c)(1), (c)(2), (c)(3), (d)(1), and adding subsection (e) to read as follows:

**§ 54.511 Ordering Services.**

(a) Selecting a provider of eligible services. In selecting a provider of eligible services, applicants shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered.

(b) Lowest corresponding price. Providers of eligible services shall not charge applicants a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

(c) Existing contracts. (1) A signed contract for services eligible for discounts pursuant to this subpart between an eligible school or library as defined under § 54.501 or consortium that includes an eligible school or library and a service provider shall be exempt from the requirements set forth in § 54.510(b), (c)(3), and (c)(4) as follows:

(i) \* \* \*

(ii) A contract signed after July 10, 1997, but before the date on which the universal service competitive bid system described in § 54.510 is operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract between January 1, 1998 and December 31, 1998.

(2) For an applicant that takes service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the applicant is exempt from the competitive bid requirements.

(3) [delete]

(d)(1) The exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts.

(e) Contract requirements. All contracts for eligible products and services must comply with state and local contract laws. Applicants must have a contract or legally binding agreement in place when filing the FCC Form 486. Applicants bear the burden of demonstrating compliance with state and local contract laws and should be prepared to provide the necessary documentation of such compliance at any time during the application review process.

13. Amend § 54.513 by revising the title and adding subsection (d) to read as follows:

**§ 54.513 Resale and transfer of services and disposal of surplus equipment.**

\* \* \* \* \*

(d) Disposal of Surplus Equipment that Has Exhausted Its Useful Life. At least five years after its installation date, surplus equipment may be resold for payment or other consideration if:

- (1) the equipment has exhausted its useful life;
- (2) the school board or other authorized body formally declares the equipment to be surplus;
- (3) the school or library notifies USAC within 90 days of reselling or trading the equipment using FCC Form 500 and keeps a record of such disposal for a period of five years following the disposal; and
- (4) the disposal process substantially complies with state and local laws, where applicable.

14. Amend § 54.519 by revising subsections (a) and (b) to read as follows:

**§ 54.519 State telecommunications networks.**

(a) Telecommunications services. State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502) on behalf of applicants. Such state telecommunications networks shall pass on such discounts to applicants and shall:

\* \* \* \* \*

(6) Comply with the competitive bid requirements set forth in § 54.510(b).

(b) Internet access and installation and maintenance of internal connections. State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.502(d), to receive universal service support for providing such services to applicants.

## APPENDIX B

## List of Commenters

*Broadband Needs in Education, Including Changes to the  
E-rate Program to Improve Broadband Deployment Public Notice**GN Docket Nos. 09-47, 09-51, 09-137**CC Docket No. 02-6**WC Docket No. 05-195*CommentsAbbreviation

1. Alaska Department of Education & Early Development	AK DOE
2. Albuquerque Public Schools	APS
3. American Association of School Administrators, Association of Educational Service Agencies	AASA & AESA
4. American Library Association	ALA
5. Anchorage School District	ASD
6. Arizona LEA Broadband Data	Ariz BB Data
7. Arizona Long Range Strategic Educational Tech Plan	AZ Long Range
8. Arkansas State E-rate Coordinator	Ark
9. AT&T Inc.	AT&T
10. Berkeley County School District	Berkeley
11. California K-12 High Speed Network	CK-12HSN
12. California PUC & the People of the State of CA	CPUC
13. City of Chicago Board of Education of the City of Chicago Chicago Public Schools, Chicago Public Library City Colleges of Chicago	City
14. Colorado's Education Access Gateway Learning Environment Network	CEAGLN
15. Common Sense Media	CSM
16. Cordova School District	CSD
17. Council of the Great City Schools	GCS
18. Dell Inc.	Dell
19. Discovery Communications, Inc.	Discovery
20. Durham Public Schools	Durham
21. e-CLIC	e-CLIC
22. Education and Libraries Networks Coalition	EdLiNC
23. Education Networks of America, Inc./ENA Services, LLC	ENA
24. E-rate Provider Services, LLC	EPS
25. Fairfax County Public Schools	FCPS
26. Florida Virtual School	FLVS
27. Franklin County, Tennessee School District	Franklin County
28. Funds for Learning	FFL
29. Houston ISD	HISD
30. Iowa Department of Education	Iowa
31. Kellogg and Sovereign Consulting	KS
32. Lower Kuskokwim School District, Alaska	Kuskokwim
33. Melissa Raes	MR
34. Miami-Dade Schools	Miami
35. Michigan Dept. of Education	MDOE
36. Mississippi Head Start	Mississippi Head Start
37. Mukilteo School District	Mukilteo



38. National Assn. of Telecommunications Officers & Advisors	NATOA
39. National Internet2 K20	Internet2
40. National School Boards Assn.	NSBA
41. Nebo School District	Nebo
42. New York State Education Department	NYSED
43. Oneida-Herkimer-Madison BOCES	OHMB
44. Ohio Public Library Information Network	OPLIN
45. Oregon Dept of Education	OR DOE
46. Pat Cassella	Cassella
47. Pelican City School District	PCSD
48. Polk County Public Schools	Polk County
49. Professor Heather E. Hudson (University of Alaska)	Hudson
50. Qualcomm Incorporated	Qualcomm
51. San Diego USD	SDUSD
52. San Bernardino County Superintendent of Schools	SBCSS
53. School District of Palm Beach County, Florida	SDPB
54. South Kitsap School District	SKSD
55. Sprint Nextel Corp.	Sprint
56. St. Charles Parish Public Schools	St. Charles
57. State E-rate Coordinators Alliance	SECA
58. State of Alaska	Ak
59. Sunesys, LLC	Sunesys
60. Telesolutions Consultants	TC
61. Texas Education Telecommunication Network	TETN
62. Texas State Library and Archives Commission	Texas State Library
63. Towanda Area School District	Towanda
64. University of Alaska	Univ. Alaska
65. Utah Education Network	UT EN
66. Verizon and Verizon Wireless	Verizon
67. Volusia County Schools	Volusia
68. West Virginia State Department of Education	WV DoE
69. Wickenburg, Arizona	Wickenburg
70. Wisconsin Department of Public Instruction	Wisconsin DPI

**Reply Comments**

1. AACC & EDUCAUSE
2. AT&T
3. Bill and Melinda Gates Foundation
4. Brian Hogan
5. CenturyLink
6. Connected Nation and The National Coalition on  
Black Civic Participation-Black Women's Roundtable
7. eCLIC
8. Gardner Edgerton SD No. 231
9. General Communication, Inc.
10. International Association for K-12 Online Learning
11. Microsoft
12. National Association of  
Telecommunications Officers and Advisors

**Abbreviation**

AACC & EDUCAUSE  
 AT&T  
 Gates Foundation  
 Hogan  
 CL  
 Connected Nation & NCBCP-BWR  
 eCLIC  
 Gardner  
 GCI  
 iNACOL  
 Microsoft  
 NATOA

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| 13. Northeastern Regional Information Center                           | NERIC       |
| 14. Noelle Kreider   | Kreider     |
| 15. Public Broadcasting Service  | PBS         |
| 16. The Schools, Health and Libraries<br>Broadband (SHLB) Coalition    | SHLB        |
| 17. Software & Information Industry Association                        | SIIA        |
| 18. State Ed Tech Directors  | SETDA       |
| 19. State E-rate Coordinators Association                              | SECA        |
| 20. The Quilt and StateNets  | Quilt       |
| 21. Washington State Office of<br>Superintendent of Public Instruction | Wash Office |

## APPENDIX C

## List of Commenters

*Second Further Notice of Proposed Rulemaking**CC Docket No. 02-6***Comments**

<b><u>Comments</u></b>	<b><u>Abbreviation</u></b>
1. Alaska Department of Education and Early Development and State Library	Alaska EED
2. American Association of School Administrators/ Association of Educational Service Agencies	AASA/ AESA
3. American Library Association	ALA
4. Arkansas E-rate Work Group	AEWG
5. Avaya, Inc.	Avaya
6. BellSouth Corporation	BellSouth
7. Central Susquehanna Intermediate Unit	
8. Consortium for School Networking International Society for Technology in Education	CoSN ISTE
9. Council of the Great City Schools	Council of GCS
10. Education and Libraries Networks Coalition	EdLiNC
11. E-Rate Central	E-rate Central
12. E-Rate Complete, LLC	E-rate Complete
13. Funds For Learning, LLC	FFL
14. General Communication, Inc.	GCI
15. Illinois State Board of Education	ISBE
16. International Business Machines Corporation	IBM
17. Kellogg & Sovereign Consulting, LLC	K&S
18. Louisiana eRate Filers Organization	LaErate
19. National Association of State Utility Consumer Advocates	NASUCA
20. New York City Department of Education	NYCDOE
21. Sprint Corporation	Sprint
22. State E-Rate Coordinators' Alliance	SECA
23. United Utilities, Inc.	United
24. Weisiger, Greg	Weisiger

**Reply Comments**

1. Alaska Department of Education and Early Development and Alaska State Library	Alaska EED
2. BellSouth Corporation	BellSouth
3. California Public Utilities Commission and the People of the State of California	CPUC or California
4. Consortium for School Networking	CoSN
5. International Society for Technology in Education	ISTE
6. Council of the Great City Schools	CGCS
7. International Business Machines Corporation	IBM
8. Sprint Corporation	Sprint
9. State E-rate Coordinators Alliance	SECA

10. Verizon  
11. Weisiger, Greg  
12. Wisconsin Department of Public Instruction

Verizon  
Weisiger  
WIDPI

## APPENDIX D

## List of Commenters

*Comprehensive Review Notice of Proposed Rulemaking**WC Docket No. 05-195*Comments

1. Alexicon Telecommunications Consulting	(Alexicon)
2. American Association of School Administrators	(AASA)
3. American Library Association	(ALA)
4. Arkansas E-rate Work Group	(AEWG)
5. AT&T Corp	(AT&T)
6. BellSouth Corporation	(BellSouth)
7. Business Discount Plan, Inc.	(BDP)
8. California Department of Education, Education Technology Office California E-rate Focus Group	(CDE)
9. Centennial Communications Corporation	(Centennial)
10. CenturyTel, Inc.	(CenturyTel)
11. Chicago Public Schools	(CPS)
12. CTIA-The Wireless Association	(CTIA)
13. Council of Chief State School Officers	(CCSSO)
14. Council of the Great City Schools	(CGCS)
15. Delaware Public Service Commission	(DEPSC)
16. Dobson Cellular Systems, Inc. & American Cellular Corporation	(Dobson)
17. Education and Library Networks Coalition	(EdLiNC)
18. Education and Early Development and the Alaska State Library	(EED)
19. E-Rate Service Provider Forum	(ESPF)
20. Federal Communications Commission, Office of Inspector General	(FCC OIG)
21. Federated Investors, Inc.	(Federated)
22. Florida Public Service Commission	(FPSC)
23. General Communication, Inc.	(GCI)
24. Greg Weisiger	(Weisiger)
25. E-Rate Alliance	(E-Rate Alliance)
26. GVNW Consulting, Inc.	(GVNW)
27. Hispanic Information and Telecommunications Network	(HITN)
28. IDT Telecom, Inc.	(IDT)
29. International Society for Technology in Education and The Consortium for School Networking	(ISTE)
30. Kellogg & Sovereign Consulting, LLC	(Kellogg and Sovereign)
31. Los Angeles Unified School District	(LAUSD)
32. Miami-Dade County Public Schools	(M-DCPS)
33. Missouri Public Service Commission	(MoPSC)
34. National Exchange Carrier Association, Inc.	(NECA)
35. National Head Start Association	(NHSA)
36. National Rural Education Advocacy Coalition	(NREAC)
37. National Telecommunications Cooperative Association	(NTCA)
38. Northeast Iowa Library Service Area	(NEILSA)

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|---|--------------------|
| 39. New Jersey Board of Public Utilities  | (NJBPU)            |
| 40. New Jersey Division of the Ratepayer Advocate   | (NJRPA)            |
| 41. New York State Education Department   | (NYSED)            |
| 42. Organization for the Promotion and Advancement<br>of Small Telecommunications Companies<br>and the Western Telecommunications Alliance  | (OPASTCO)          |
| 43. Orin Heend and Sara Fitzgerald  | (Heend/Fitzgerald) |
| 44. Private School Technology Coalition<br>Agudath Israel<br>Association of Christian Schools International<br>Council for American Private Educators<br>National Catholic Education Association<br>National Association of Independent Schools<br>United States Conference of Catholic Bishops | (PSTC)             |
| 45. Qwest Communications International Inc.   | (Qwest)            |
| 46. Regulatory Studies Program<br>Mercatus Center George Mason University   | (Mercatus)         |
| 47. SBC Communications Inc.   | (SBC)              |
| 48. Sprint Nextel Corporation   | (Sprint Nextel)    |
| 49. South Carolina K12 School Technology Initiative Partnership   | (SC K12 Committee) |
| 50. State E-Rate Coordinators Alliance  | (SECA)             |
| 51. TracFone Wireless, Inc.   | (TracFone)         |
| 52. Trillion Partners, Inc.   | (Trillion)         |
| 53. United States Telecom Association   | (USTelecom)        |
| 54. Universal Service Administrative Company  | (USAC)             |
| 55. Verizon   | (Verizon)          |
| 56. West Virginia Department of Education   | (WVDE)             |
| 57. West Virginia Library Commission  | (WVLC)             |
| 58. Wisconsin Department of Public Instruction  | (Wisconsin DPI)    |

### **Reply Comments**

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|---|--------------------------|
| 1. American Association of School Administrators  | (AASA)                   |
| 2. American Library Association   | (ALA)                    |
| 3. AT&T Inc.  | (AT&T)                   |
| 4. Council of the Great City Schools  | (CGCS)                   |
| 5. Dobson Cellular Systems, Inc. and American Cellular Corporation                              | (Dobson)                 |
| 6. GVNW Consulting, Inc.  | (GVNW)                   |
| 7. Hispanic Information and Telecommunications Network, Inc.                                    | (HITN)                   |
| 8. IDT Telecom, Inc.  | (IDT)                    |
| 9. Illinois State Library/Office of the Secretary of State                                      | (Illinois State Library) |
| 10. International Business Machines Corporation   | (IBM)                    |
| 11. International Society for Technology in Education   | (ISTE)                   |
| 12. National Exchange Carrier Association, Inc.   | (NECA)                   |
| 13. National Telecommunications Cooperative Association   | (NTCA)                   |
| 14. New Jersey Division of the Ratepayer Advocate   | (NJRPA)                  |
| 15. Organization for the Promotion and Advancement<br>of Small Telecommunications Companies and | (OPASTCO)                |
| 16. Western Telecommunications Alliance   | (WTA)                    |
| 17. Pennsylvania Department of Education  | (PA DOE)                 |

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| 18. Qwest Communications International Inc.              | (Qwest)         |
| 19. Sprint Nextel Corporation                            | (Sprint Nextel) |
| 20. State Educational Technology Directors Association   | (SETDA)         |
| 21. State E-rate Coordinators Alliance                   | (SECA)          |
| 22. South Dakota Department of Education                 | (SDDOE)         |
| 23. Universal Service Administrative Company             | (USAC)          |
| 24. Verizon  | (Verizon)       |
| 25. WiscNet  | (WiscNet)       |
| 26. Wisconsin Council on Library and Network Development | (COLAND)        |
| 27. Wisconsin Department of Public Instruction           | (Wisconsin DPI) |

## APPENDIX E

## Initial Regulatory Flexibility Analysis

1. Pursuant to the Regulatory Flexibility Act (“RFA”),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM).<sup>2</sup> Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>3</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>4</sup>

**1. Need for, and Objectives of, the Proposed Rules**

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.<sup>5</sup> On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.<sup>6</sup> Specifically, under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.<sup>7</sup>

3. This NPRM is one in a series of rulemaking proceedings designed to implement the National Broadband Plan’s (NBP) vision of improving and modernizing the universal service programs.<sup>8</sup> The Joint Statement on Broadband, released with the National Broadband Plan, identifies comprehensive universal service fund (USF) reform as an essential goal for the Federal Communications Commission (Commission).<sup>9</sup> In meeting the objectives set forth in these documents, this NPRM seeks comment on reforms to focus spending on more productive uses that will better serve the current educational needs of schools and libraries, while maintaining the overall size of the E-rate program in relation to the rate of inflation. This NPRM also seeks comment on potential reforms that would eliminate rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse.

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (“CWAAA”). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”).

<sup>2</sup> We note that, because our actions here do not add any compliance burdens constituting a significant economic impact on small entities, we could have chosen to certify our actions under 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 603(a).

<sup>4</sup> *Id.*

<sup>5</sup> See 47 U.S.C. § 254 *passim*.

<sup>6</sup> *Universal Service Order*, 12 FCC Rcd 8776.

<sup>7</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>8</sup> Connecting America: The National Broadband Plan (rel. Mar. 16, 2010) (NBP), at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf) (last visited May 20, 2010).

<sup>9</sup> *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42, para. 3 (rel. March 16, 2010) (*Joint Statement on Broadband*).



## 2. Legal Basis

4. The legal basis for the NPRM is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403.

## 3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>10</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>11</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>12</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>13</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>14</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>15</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>16</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>17</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>18</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>19</sup> Thus, we estimate that most governmental jurisdictions are small.

6. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including

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<sup>10</sup> 5 U.S.C. § 603(b)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>13</sup> Small Business Act, 15 U.S.C. § 632.

<sup>14</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

<sup>15</sup> 5 U.S.C. § 601(4).

<sup>16</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>17</sup> 5 U.S.C. § 601(5).

<sup>18</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>19</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for internal connections.<sup>20</sup>

**a. Schools**

7. As noted, “small entity” includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”<sup>21</sup> A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>22</sup> For-profit schools, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program.<sup>23</sup> Certain other restrictive definitions apply as well.<sup>24</sup> The SBA has also defined for-profit, elementary and secondary schools having \$7 million or less in annual receipts as small entities.<sup>25</sup> In funding year 2007, approximately 105,500 schools received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these additional entities that would qualify as small entities under SBA’s size standard, we estimate that fewer than 105,500 such schools might be affected annually by our action, under current operation of the program.

**b. Telecommunications Service Providers**

8. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>26</sup> According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services.<sup>27</sup> Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.<sup>28</sup> Thus, under this category and associated small business size standard, we estimate that the majority of entities are small.

9. We have included small incumbent local exchange carriers in this RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>29</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not

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<sup>20</sup> 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

<sup>21</sup> 47 C.F.R. § 54.500(c).

<sup>22</sup> 47 C.F.R. § 54.500(k).

<sup>23</sup> 47 C.F.R. § 54.501.

<sup>24</sup> *See id.*

<sup>25</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 611110.

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>27</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.5, Page 5-5 (August 2008) (*2008 Trends Report*) (using data that is current as of Nov. 1, 2006).

<sup>28</sup> *Id.*

<sup>29</sup> 5 U.S.C. § 601(3).

“national” in scope.<sup>30</sup> We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

10. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.<sup>31</sup> This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>32</sup> According to the Commission’s *2008 Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services.<sup>33</sup> Of these 300 IXCs, an estimated 268 have 1,500 or few employees and 32 have more than 1,500 employees.<sup>34</sup> Consequently, the Commission estimates that most providers of interexchange services are small businesses.

11. *Competitive Access Providers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.<sup>35</sup> This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.<sup>36</sup> According to the *2008 Trends Report*, 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.<sup>37</sup> Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or few employees and 87 have more than 1,500 employees.<sup>38</sup> Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

12. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>39</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>40</sup> Under the present and prior categories, the SBA has deemed a wireless business

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<sup>30</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>31</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>32</sup> *Id.*

<sup>33</sup> *2008 Trends Report*, Table 5.3, page 5-5.

<sup>34</sup> *Id.*

<sup>35</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>36</sup> *Id.*

<sup>37</sup> *2008 Trends Report*, Table 5.3, page 5-5.

<sup>38</sup> *Id.*

<sup>39</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>40</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

to be small if it has 1,500 or fewer employees.<sup>41</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>42</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>43</sup> For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>44</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>45</sup> Thus, we estimate that the majority of wireless firms are small.

13. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>46</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>47</sup> According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.<sup>48</sup> Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.<sup>49</sup> We have estimated that 222 of these are small under the SBA small business size standard.

14. *Common Carrier Paging*. As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).<sup>50</sup> Prior to that time, such firms were within the now-superseded category of "Paging."<sup>51</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>52</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year.<sup>53</sup> Of this total, 804 firms had employment of

<sup>41</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>42</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>43</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>44</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>45</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>46</sup> 13 C.F.R. § 121.201, NAICS code 517210.

<sup>47</sup> *Id.*

<sup>48</sup> "Trends in Telephone Service" at Table 5.3.

<sup>49</sup> "Trends in Telephone Service" at Table 5.3.

<sup>50</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>51</sup> U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>52</sup> 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>53</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>54</sup> Thus, we estimate that the majority of paging firms are small.

15. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>55</sup> A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>56</sup> The SBA has approved this definition.<sup>57</sup> An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.<sup>58</sup> Fifty-seven companies claiming small business status won 440 licenses.<sup>59</sup> A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>60</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>61</sup>

16. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of “paging and messaging” services.<sup>62</sup> Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>63</sup> We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

### c. Internet Service Providers

17. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired

<sup>54</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>55</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 (“*Paging Second Report and Order*”); see also *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

<sup>56</sup> *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

<sup>57</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (“WTB”), FCC (Dec. 2, 1998) (“*Alvarez Letter 1998*”).

<sup>58</sup> See “929 and 931 MHz Paging Auction Closes,” Public Notice, 15 FCC Rcd 4858 (WTB 2000).

<sup>59</sup> See *id.*

<sup>60</sup> See “Lower and Upper Paging Band Auction Closes,” Public Notice, 16 FCC Rcd 21821 (WTB 2002).

<sup>61</sup> See “Lower and Upper Paging Bands Auction Closes,” Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>62</sup> “Trends in Telephone Service” at Table 5.3.

<sup>63</sup> “Trends in Telephone Service” at Table 5.3.

Telecommunications Carriers,<sup>64</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>65</sup> The latter are within the category of All Other Telecommunications,<sup>66</sup> which has a size standard of annual receipts of \$25 million or less.<sup>67</sup> The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.<sup>68</sup> That category had a small business size standard of \$21 million or less in annual receipts, which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.<sup>69</sup> Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24, 999,999.<sup>70</sup> Consequently, we estimate that the majority of ISP firms are small entities.

#### d. Vendors of Internal Connections

18. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.”<sup>71</sup> The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.<sup>72</sup> According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.<sup>73</sup> Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499.<sup>74</sup> Thus, under this size standard, the majority of firms can be considered small.

<sup>64</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>65</sup> 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

<sup>66</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>67</sup> 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

<sup>68</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

<sup>69</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

<sup>70</sup> An additional 45 firms had receipts of \$25 million or more.

<sup>71</sup> U.S. Census Bureau, 2002 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>72</sup> 13 C.F.R. § 121.201, NAICS code 334210.

<sup>73</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

<sup>74</sup> *Id.* An additional 4 establishments had employment of 2,500 or more.

19. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>75</sup> The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.<sup>76</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>77</sup> Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.<sup>78</sup> Thus, under this size standard, the majority of firms can be considered small.

20. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”<sup>79</sup> The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.<sup>80</sup> According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.<sup>81</sup> Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.<sup>82</sup> Thus, under this size standard, the majority of firms can be considered small.

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<sup>75</sup> U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/naics/2007/def/ND334220.HTM#N334220..>

<sup>76</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>77</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>78</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>79</sup> U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>80</sup> 13 C.F.R. § 121.201, NAICS code 334290.

<sup>81</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

<sup>82</sup> *Id.* An additional 3 establishments had employment of 1,000 or more.

**4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

21. The specific proposals under consideration in the NPRM would not, if adopted, result in additional recordkeeping requirements for small businesses.

**5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.<sup>83</sup>

23. In this NPRM, we seek comment on a package of potential reforms to the E-rate program that can be implemented in funding year 2011 (July 1, 2011 – June 30, 2012). We seek to improve and modernize the program by streamlining the E-rate application process, providing greater flexibility to choose the most cost-effective and educationally useful broadband services, and expanding the reach of broadband to the classroom. More particularly, these proposed reforms include: improving and simplifying the current E-rate application process; codifying the requirement that competitive bidding processes be “fair and open”; simplifying the way schools calculate their discounts; conforming the E-rate definition of “rural” to the Department of Education’s definition; allowing greater flexibility in the use of wireless Internet access for educational purposes away from school grounds; allowing recipients the option of leasing low-cost fiber; expanding the reach of broadband in residential schools that serve populations facing unique challenges; creating a predictable funding mechanism that would provide a per student amount for internal connections each year, while eliminating support for basic maintenance of internal connections; indexing the current \$2.25 billion cap on E-rate disbursements to inflation; and creating a process for schools and libraries to dispose of obsolete equipment.

24. As note, we believe the proposals and options being put out for comment will not have a significant economic impact on small entities under the E-rate program. Indeed the proposals and options will benefit small entities by simplifying the application process, eliminating burdensome restrictions on the purchase of certain broadband technologies, creating a more stable and predictable funding pool, and allowing more applicants to receive program funding, while ensuring that the amount of funding available keeps pace with the rate of inflation. Because this NPRM does not propose additional regulation for service providers and equipment vendors, these small entities will experience no significant additional burden. We nonetheless invite commenters, in responding to the questions posed and tentative conclusions in the NPRM, to discuss any economic impact that such changes may have on small entities, and possible alternatives.

**6. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules**

25. None.

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<sup>83</sup> See 5 U.S.C. § 603(c).



**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

*Re: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan for Our Future, GN Docket No. 09-51*

For our children to compete in the 21<sup>st</sup> century, our schools and libraries must be connected to world-class broadband networks. The National Broadband Plan laid out a vision of cutting-edge classrooms where students and teachers have innovative digital tools, access to best online educational content in the world, and the skills to take advantage of them.

A few months ago we took our first step to modernize E-rate for broadband by allowing schools to open their services to their communities. Today, we take another step toward the vital goal of updating E-rate for broadband with a series of essential reforms.

E-rate -- enacted by Congress through the leadership of Senator Jay Rockefeller (D-WV), Senator Olympia Snowe (R-ME), and Congressman Ed Markey (D-MA) -- was a revolutionary achievement that has expanded opportunities for schoolchildren and communities across the country. Through the E-rate program, 97 percent of American schools and nearly all public libraries now have Internet access.

But the National Broadband Plan found that many schools need significant upgrades to meet broadband speed and capacity demands, and that many E-rate policies are out-of-date. Building on the National Broadband Plan, today we propose a number of significant reforms, drawing on the agency's years of knowledge and experience with E-rate -- and the vast array of feedback we've received from participants, educational experts, and other stakeholders through the National Broadband Plan process.

First, we propose giving schools and libraries greater flexibility to choose the most cost-effective and educationally useful broadband services -- including mobile services that students can use outside the classroom. Teachers across the country -- in urban and rural areas -- have told us that the use of broadband to enable learning should not stop at the schoolyard gate.

Second, we propose to simplify the E-rate application process; cut red tape by eliminating federal requirements that overlap with state or local contracting requirements; and reduce some of the limitations on residential schools that serve populations facing unique challenges.

And finally, in view of persuasive recommendations from many strong supporters of the E-rate program, we propose to index the E-rate cap to keep pace with inflation.

Together, these proposals will accomplish real and important objectives on behalf of families, children and teachers.

Updating E-rate is a key pillar of comprehensive reform of universal service, one of the primary recommendations of the National Broadband Plan. Today's item also reflects our commitment to smart and fiscally prudent policies that eliminate inefficiencies and target universal service support effectively to have the greatest possible impact.

I look forward to working with my colleagues to improve the E-rate program for the 21<sup>st</sup> century, and I thank the staff for their hard work on this item.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan for Our Future, GN Docket No. 09-51*

Three months ago, the Commission approved an Order which would allow schools to make E-Rate funded facilities and services available to the general public outside of regular school hours. That Order was this Commission's first official action toward achieving the goals of the National Broadband Plan. Of all the programs and initiatives that I've seen at the FCC, E-Rate is, to my mind, easily the best. By connecting schools and libraries to the Internet, it has connected a generation of young people to the enabling technology of the Twenty-first century. Thanks to E-Rate, students and communities across the land can access the digital tools necessary to learn, to compete, to find opportunity and to prosper. I can't think of a better program to put front-and-center as we move forward to implement the National Broadband Plan.

So I am pleased to support this item to improve and modernize E-Rate by considering ways to streamline the application process, to provide greater flexibility for program participants to select among broadband services and expand the reach of broadband to the classroom. E-Rate, which has accomplished so much for so many, can have a future even more illustrious than the achievements it has already logged. This program deserves to be empowered so it can keep up with the latest technologies and with all the new educational tools that are coming online. The item before us considers a broad array of possibilities—some may turn out to be, upon examination by commenters in the weeks ahead, better than others. And there will be many ideas we haven't even thought of here. But—a note of realism—we must always be cognizant that this is a capped program, so some priorities trump others. The basic task is to get high speed, high capacity broadband out to these institutions—and that challenge takes precedence over some of the other very meritorious ideas which could bring added luster to E-rate. Providing access is the precondition for harvesting the rich fruits of that access.

I thank my colleagues for their continuing support of the E-Rate program, and I also want to express my gratitude to the Bureau for its hard and creative work on this item. I look forward to developing a really good and innovative record on this Notice and moving forward to actions that will make this hugely successful program even better.